IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27074-2-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
CEU LING,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	
	)	

Schultheis, C.J. — To prove the crime of luring a child, RCW 9A.40.090, the State must establish "more than an invitation alone; enticement, by words or conduct, must accompany the invitation." *State v. McReynolds*, 142 Wn. App. 941, 948, 176 P.3d 616 (2008) (citing *State v. Dana*, 84 Wn. App. 166, 176, 926 P.2d 344 (1996)). Ceu Ling asked a six-year-old girl if she wanted to come to his home. He was charged with luring and convicted in a bench trial. He challenges the sufficiency of the evidence.

We conclude that the evidence is insufficient to support the conviction. We therefore reverse and remand for dismissal.

FACTS

Mr. Ling, a Burmese refugee, was riding his bicycle at about noon on July 26, 2007. He stopped to talk to a group of children at 1024 W. Mansfield in Spokane where a garage sale was taking place. One of the children knew Mr. Ling, and Mr. Ling engaged in a friendly conversation with the children. Two adults running the garage sale, Kenith King and James King, were within hearing distance of the conversation.

Mr. Ling asked one child, six-year-old T.B., "'Want to come to my home?'" Clerk's Papers (CP) at 8. T.B. did not know Mr. Ling and had not spoken to him before that day. T.B. responded, "'no.'" CP at 8. The adults heard the exchange and detained Mr. Ling until police arrived. The adults asked Mr. Ling why he would ask T.B. to come to his home, and he responded, "'because I'm lonely.'" CP at 8.

Mr. Ling was charged with child luring. He was convicted after a bench trial. The court entered findings of fact, from which these case facts are derived, and conclusions of law. Mr. Ling was sentenced to 24 months' probation and ordered to attend cultural awareness training. He appeals.

DISCUSSION

A challenge to the sufficiency of the evidence presented at a bench trial requires us to review the trial court's findings of fact and conclusions of law to determine whether substantial evidence supports the challenged findings and whether the findings support the conclusions. *State v. Moore*, 161 Wn.2d 880, 885, 169 P.3d 469 (2007). We review

challenges to a trial court's conclusions of law de novo. *State v. Gatewood*, 163 Wn.2d 534, 539, 182 P.3d 426 (2008).

"A person commits the crime of luring if the person: (1)(a) Orders, lures, or attempts to lure a minor . . . into any area or structure that is obscured from or inaccessible to the public or into a motor vehicle; (b) Does not have the consent of the minor's parent or guardian . . .; and (c) Is unknown to the child." RCW 9A.40.090. Only the first element is at issue here.

"Luring is more than an invitation alone; enticement, by words or conduct, must accompany the invitation." *McReynolds*, 142 Wn. App. at 948 (citing *Dana*, 84 Wn. App. at 176).

The trial court in this case found, "To a six year old, going to the home of a friendly adult can be perceived as a benefit [or] as an enticement." CP at 8. We are troubled by this finding. Substantial evidence does not support the trial court's statement as a finding of fact. No evidence was presented as to how six-year-olds in general, or this six-year-old specifically, perceived the offer, except T.B. declined. But the trial court states the proposition generally, more as a permissive inference.

As this statement is made, however, it seems more properly described as a conclusion of law. "A conclusion of law that is erroneously denominated a finding of fact is reviewed as a conclusion of law." *State v. Gaines*, 122 Wn.2d 502, 508, 859 P.2d

36 (1993). "'A finding of fact is the assertion that a phenomenon has happened or is or will be happening independent of or anterior to any assertion as to its legal effect.'" *State v. Williams*, 96 Wn.2d 215, 221, 634 P.2d 868 (1981) (internal quotation marks omitted) (quoting *Leschi Improvement Council v. Wash. State Highway Comm'n*, 84 Wn.2d 271, 283, 525 P.2d 774, 804 P.2d 1 (1974)). "Where findings *necessarily* imply one conclusion of law the question still remains whether the evidence justified that conclusion." *Id.*

As a legal conclusion, it is contrary to the precedent established in our courts when it is unaccompanied with facts to support it. In *Dana*, Division One of this court held that the luring statute did not impermissibly burden constitutionally protected speech and was not facially overbroad. 84 Wn. App. at 174. This conclusion is based on the requirement that the proscribed act include more than a mere invitation. Thus, a stranger's mere invitation to enter a car or inaccessible area or structure, directed toward a child, is not prohibited.

In order to constitute a luring in violation of the statute, the invitation must include some other verbal enticement or other conduct constituting an enticement or attempted enticement. *Id.* at 175. The general statement that the prospective host was friendly when offering the invitation falls short under the facts found by the trial court here. There was no evidence that anything was offered or implied by the invitation, by actions

or verbal communication, except the invitation itself. The trial court merely found that Mr. Ling "was friendly with the children." CP at 8.

The trial court essentially concluded that the friendliness of the context of an invitation itself can imply some type of expectation of hospitality limited only by the imagination of a six-year-old, which can constitute enticement. That may be true in some situations. But there is no evidence that this was the case here.

The only evidence of the demeanor of the invitation came from Kenith King, who testified, "[Mr. Ling] was talking real friendly with a little boy by the name of Kyle because Kyle evidently knew him, and he started talking to [T.B.], and he said to [T.B.] he wanted her to come home with him."[1] Report of Proceedings at 26. Mr. Ling was on his bicycle, about three feet away from T.B.

The evidence shows nothing more than an invitation extended in a friendly conversation. The evidence was insufficient to support a conviction for luring a child.

We reverse and remand for dismissal.

A majority of the panel has determined that this opinion will not be printed in the

[1] Under cross-examination, Mr. King acknowledged that he quoted Mr. Ling's invitation differently when he spoke to police. He told police that he heard Mr. Ling ask T.B., "'Do you want to come to my house?'" Report of Proceedings (RP) at 29. Ultimately, the trial court found that Mr. Ling asked, "'Want to come to my home?'" CP at 8.

Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Schultheis, C.J.

WE CONCUR:

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Sweeney, J.

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Brown, J.